



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/159110

PRELIMINARY RECITALS

Pursuant to a petition filed July 16, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Walworth County Department of Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on August 19, 2014.

The issue for determination is whether the agency correctly determined that petitioner was overpaid FS due to a failure to report a change in residence, specifically that she moved out of the State of Wisconsin.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Diana Wojcik

Walworth County Department of Human Services
W4051 County Rd NN
Elkhorn, WI 53121-1006

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Illinois. She moved to Illinois from Wisconsin in September 2013.
2. In June 2013 petitioner applied for FS in Wisconsin. On June 20, 2013 the agency issued a notice of decision to petitioner stating that she would get FS for June-August. The notice advised

petitioner that if she had a new address or a change in where she was staying, that she had to report that change with 10 days. The notice also advised that if she didn't report a change and she got benefits that she was not eligible for, that she may have to pay the agency back. See Exhibit 1.

3. In April and May 2014 the agency received mail returned from petitioner's Wisconsin address. See Exhibit 2 and 4.
4. Petitioner's FS closed in Wisconsin on June 1, 2014 because she did not complete her FS review. The agency then became aware through telephone contact with petitioner that she had moved to Illinois in September 2013.
5. On July 7, 2014 the agency issued a notice to petitioner stating that petitioner had been overissued FS for the period of November 1, 2013 through May 31, 2014 in the amount of \$1323 (claim # [REDACTED]) due to her failure to report her move to Illinois.

DISCUSSION

The issue for determination is whether the agency correctly concluded that petitioner was overissued FS due to a failure to report a change in residence, specifically that she moved out of the State of Wisconsin. The FS regulations provide that FS recipients must live in the state in which they apply for benefits, and that no individual can participate in more than one household or in more than one project area. 7 C.F.R. §273.3(a).

There was no dispute that petitioner moved from Wisconsin in September 2013, and therefore the agency made a claim for overpayment. FS overpayments are calculated by determining the correct amount of food stamp benefits, if any, the household was entitled to receive, and establishing a claim for the difference between the allotment the household received and the allotment the household should have received. 7 C.F.R. §273.18(c)(1). I have reviewed the county's calculations and can find no error in the amounts calculated.

Petitioner's testimony was that she did not intend to do anything wrong and that her situation during the overpayment period was difficult, and she had not been able to keep up with her mail. However, FS overpayments, regardless of fault, must be collected. 7 C.F.R. §273.18(a). An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). As FS recipients must live in the state in which they apply for benefits, petitioner received more FS than she was entitled to receive when she moved out of Wisconsin. Thus, based on all of the above, I must find that the agency was correct in establishing petitioner's FS overpayment.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The agency correctly determined that petitioner was overpaid FS (claim # [REDACTED]) due to a failure to report a change in residence, specifically that she moved out of the State of Wisconsin.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

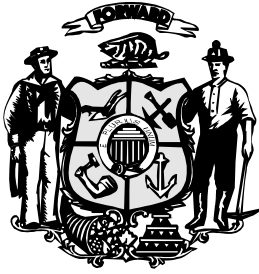
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 25th day of August, 2014

\sKelly Cochran
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 25, 2014.

Walworth County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability